

Robert E. Pastor, SBN 021963
MONTOKA, LUCERO & PASTOR P.A.
3200 North Central Avenue, Suite 2550
Phoenix, Arizona 85012
(602) 279-8969
Fax: (602) 256-6667
pastor@mlpattorneys.com
Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

██████████, a single woman,

Case No.: ██████████

Plaintiff,

**FIRST AMENDED
COMPLAINT**

v.

(Tort – Negligence)

MASSAGE ENVY FRANCHISING L.L.C.,
an Arizona corporation; PHOENIX
WELLNESS MASSAGE INC., an Arizona
Corporation, dba MASSAGE ENVY SPA;
PHOENIX WELLNESS AVONDALE, INC.,
an Arizona corporation dba MASSAGE
ENVY SPA; ██████████ and JANE
DOE ██████████, husband and wife; JOHN DOE
I-X; JANE DOE I-X; and Black & White
Corporations I-X, ABC Partnerships I-X,

Defendants.

For her complaint, Plaintiff states the following:

JURISDICTIONAL ALLEGATIONS

1. Plaintiff ██████████ resides in Maricopa County, Arizona.
2. Defendant Massage Envy Franchising LLC is an Arizona Corporation authorized and doing business in Maricopa County, Arizona. Defendant

1 Massage Envy Franchising LLC caused acts, events, or omissions to
2 occur in Maricopa County, Arizona out of which these claims arise.

3 3. Defendant Phoenix Wellness Massage Inc., dba Massage Envy Spa is an
4 Arizona corporation authorized and doing business at 9945 W.
5 McDowell Road, Suite 107 in Avondale, Maricopa County, Arizona.
6 Defendant Phoenix Wellness Massage Inc., dba Massage Envy Spa
7 caused acts, events, or omissions to occur in Arizona out of which these
8 claims arise.
9

10 4. Defendant Phoenix Wellness Avondale Inc., dba Massage Envy Spa is
11 an Arizona corporation authorized and doing business at 9945 W.
12 McDowell Road, Suite 107 in Avondale, Maricopa County, Arizona.
13 Defendant Phoenix Wellness Avondale Inc., dba Massage Envy Spa
14 caused acts, events, or omissions to occur in Arizona out of which these
15 claims arise.

16 5. Defendants [REDACTED] and Jane Doe [REDACTED] husband and wife reside
17 in Maricopa County, Arizona. At all times alleged, Defendant [REDACTED]
18 [REDACTED] was acting for and on behalf of his marital community with Jane
19 Doe [REDACTED]. Plaintiff does not know the true name of the defendant
20 denominated as Jane Doe [REDACTED] but will substitute the true name of the
21 party prior to entry of judgment.
22

23 6. Defendant [REDACTED] is and at all times alleged was agent and or
24 employee of Defendants Massage Envy Franchising LLC, Phoenix
25 Wellness Massage Inc., dba Massage Envy Spa, and or Phoenix
26 Wellness Avondale Inc., dba Massage Envy Spa who in the course and
27 scope of his employment, actual and or apparent authority with
28 Defendants Massage Envy Franchising LLC, Phoenix Wellness Massage

1 Inc., dba Massage Envy Spa, and or Phoenix Wellness Avondale Inc.,
2 dba Massage Envy Spa caused acts, events, and or omissions to occur in
3 Maricopa County, Arizona out of which these claims arise.

4 7. Defendants JOHN DOES I-X, JANE DOES I-X, BLACK & WHITE
5 CORPORATIONS I-X, and ABC PARTNERSHIPS I-X are fictitious
6 names designating an individual or individuals or legal entities not yet
7 identified who acted in concert with the named Defendants either
8 as principals, agents, or co-participants whose true names Plaintiff may
9 insert when identified. These defendants, their agents, employees, and or
10 directors, caused acts, events, or omissions to occur in Arizona out of
11 which these claims arise.

12 8. Plaintiff is informed and believes, and on that basis alleges, that at all
13 times mentioned herein, there existed a unity of interest and or
14 ownership among Defendants and each of them, such that any
15 individuality and separateness between Defendants, and each of them,
16 ceased to exist. Defendants, and each of them, were the successors-in-
17 interest and / or alter egos of the other Defendants, and each of them, in
18 that they purchased, controlled, dominated and operated each other
19 without any separate identity, observation of formalities, or other
20 manner of division. To continue maintaining the façade of a separate
21 and individual existence between and among Defendants, and each of
22 them, would serve to perpetuate a fraud and an injustice.

23 **GENERAL ALLEGATIONS**

24 9. Plaintiffs incorporate all other paragraphs.

25 10. At all times alleged, Plaintiff was a customer of Defendants Massage
26 Envy Franchising LLC, Phoenix Wellness Massage Inc., dba Massage
27
28

1 Envy Spa, and or Phoenix Wellness Avondale Inc., dba Massage Envy
2 Spa and [REDACTED]

3 11. [REDACTED] is or was a massage therapist acting within the course and
4 scope of his employment, actual or apparent authority with Defendants
5 Massage Envy Franchising LLC, Phoenix Wellness Massage Inc., dba
6 Massage Envy Spa, and or Phoenix Wellness Avondale Inc., dba
7 Massage Envy Spa.
8

9 12. On December 1, 2015, [REDACTED] provided massage therapy to
10 Plaintiff at the Massage Envy Spa located at 9945 W. McDowell Road,
11 Suite 107 in Avondale, Maricopa County, Arizona. While administering
12 massage therapy treatment to Plaintiff, Defendant [REDACTED]
13 removed the linens used to cover Plaintiff during the massage.
14 Defendant [REDACTED] massaged Plaintiff and during the massage he
15 touched her [REDACTED] including but not limited to digitally penetrating
16 Plaintiff's [REDACTED]
17

18 13. Plaintiff reported the wrongful touching to police and staff at the
19 Massage Envy Spa located at 9945 W. McDowell Road, Suite 107 in
20 Avondale, Maricopa County, Arizona.

21 14. Defendants Massage Envy Franchising LLC, Phoenix Wellness Massage
22 Inc., dba Massage Envy Spa, and or Phoenix Wellness Avondale Inc.,
23 dba Massage Envy Spa have a pattern and practice of discouraging
24 customers from reporting and failing to report inappropriate touching
25 and other wrongful acts by massage therapists. Defendants developed,
26 implemented, trained, and enforced policies and procedures designed to
27 discourage spa customers from reporting inappropriate touching in order
28 to protect the Massage Envy reputation and brand.

15. Defendant Massage Envy Franchising LLC is an agent, co-venture, and
or alter ego of Defendants. Defendant Massage Envy Franchising LLC

1 maintains control over franchisees to protect its reputations and brand by
2 providing policies, procedures, standards, forms, directives, instructions,
3 training, education, background checks, and or advertising among other
4 services and benefits to franchisees. Defendant Massage Envy
5 Franchising LLC may revoke, rescind, withdraw and or cancel its
6 franchisor-franchisee and or agency relationship with Defendants
7 [REDACTED] Phoenix Wellness Massage Inc., dba Massage Envy Spa,
8 and or Phoenix Wellness Avondale Inc., dba Massage Envy Spa.
9

- 10 16. Defendant Massage Envy Franchising LLC trains and certifies massage
11 therapists to work in in its spas. The training includes, but is not limited
12 to hands-on field training, online training and or webinars.
- 13 17. Defendant Massage Envy Franchising LLC recruits, screens, trains, and
14 supports massage therapist to work in its spas including, but not limited
15 to providing background checks on massage therapists and providing
16 training to massage therapists.
- 17 18. Defendant Massage Envy Franchising LLC provides franchisees with
18 procedures to follow when an inappropriate touch is reported.
- 19 19. Defendant Massage Envy Franchising LLC works with franchisees to
20 select the appropriate real estate site to foster profitability and maintain
21 Massage Envy Spa's reputation and brand. At each spa location,
22 Massage Envy Franchising LLC requires consistency with respect to
23 advertising, brand and or logos, construction, layout, design, services
24 provided, membership agreements and or benefits, and or fees for
25 massage services.
- 26 20. Defendants Phoenix Wellness Massage Inc., dba Massage Envy Spa,
27 and or Phoenix Wellness Avondale Inc., dba Massage Envy Spa pays
28 Massage Envy Franchising LLC six percent of its gross sales.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNT I

**Negligent hiring / retention / control / supervision / training
(Defendants Message Envy / Phoenix Wellness Massage /
Phoenix Wellness Avondale)**

21. Plaintiff incorporates all other paragraphs.
22. Defendants Massage Envy Franchising LLC, Phoenix Wellness Massage Inc., dba Massage Envy Spa, and or Phoenix Wellness Avondale Inc., dba Massage Envy Spa have a duty of reasonable care to hire, terminate, train, retain, supervise, and or control its employees, agents, and or massage therapists.
23. Defendants, and each of them, breached their duties owed to Plaintiff.
24. As a direct and proximate cause of Defendants' wrongful acts Plaintiff suffered and will continue to suffer in the future great pain of mind and body, shock, emotional distress, embarrassment, depression, anxiety, loss of self-esteem, disgrace, humiliation, anger, rage, frustration, loss of enjoyment of life, loss of consortium, loss of love and affection, sexual dysfunction, past and future medical expenses for psychological treatment, therapy, and counseling.

COUNT II

**Negligent protection / safety on the premises
(Message Envy / Phoenix Wellness Massage /
Phoenix Wellness Avondale)**

25. Plaintiff incorporates all other paragraphs.
26. Defendants Massage Envy Franchising LLC, Phoenix Wellness Massage Inc., dba Massage Envy Spa, and or Phoenix Wellness Avondale Inc., dba Massage Envy Spa owe a duty of reasonable care to protect Plaintiff and or make the premises safe.
27. Defendants Massage Envy Franchising LLC, Phoenix Wellness Massage

1
2 Inc., dba Massage Envy Spa, and or Phoenix Wellness Avondale Inc.,
3 dba Massage Envy Spa owe a duty of reasonable care to maintain safe
4 conditions in the Massage Envy Spa and or spa treatment rooms
5 including, but not limited to the activities in the spa.
6

7 28. Defendants Massage Envy Franchising LLC, Phoenix Wellness Massage
8 Inc., dba Massage Envy Spa, and or Phoenix Wellness Avondale Inc.,
9 dba Massage Envy Spa owe a duty of reasonable care to avoid creating
10 situations which pose an unreasonable risk of harm to others, including
11 Plaintiff.

12 29. Defendants Massage Envy Franchising LLC, Phoenix Wellness Massage
13 Inc., dba Massage Envy Spa, and or Phoenix Wellness Avondale Inc.,
14 dba Massage Envy Spa breached their duties owed to Plaintiff.

15 30. As a direct and proximate cause of Defendants' wrongful acts Plaintiff
16 suffered and will continue to suffer in the future great pain of mind and
17 body, shock, emotional distress, embarrassment, depression, anxiety,
18 loss of self-esteem, disgrace, humiliation, anger, rage, frustration, loss of
19 enjoyment of life, loss of consortium, loss of love and affection, sexual
20 dysfunction, past and future medical expenses for psychological
21 treatment, therapy, and counseling.
22

23 **COUNT III**
24 **(Negligence / Respondeat Superior)**
25 **(All Defendants)**

26 31. Plaintiff incorporates all other paragraphs.

27 32. Defendant [REDACTED] negligently and or recklessly performed
28 massage therapy treatment on Plaintiff touching and or penetrating her
[REDACTED] while in the course and scope of his employment, actual or
apparent authority with Defendants Massage Envy Franchising LLC,

Phoenix Wellness Massage Inc., dba Massage Envy Spa, and or Phoenix Wellness Avondale Inc., dba Massage Envy Spa.

33. Defendants provided massage therapy to Plaintiff. Defendants failed to exercise that degree of care, skill, and learning expected of a reasonable, prudent massage therapist breaching their duties owed to Plaintiff.

34. Defendants Massage Envy Franchising LLC, Phoenix Wellness Massage Inc., dba Massage Envy Spa, and or Phoenix Wellness Avondale Inc., dba Massage Envy Spa are vicariously liable for the wrongful acts of its agent and or employee [REDACTED].

35. As a direct and proximate cause of Defendants' wrongful acts Plaintiff suffered and will continue to suffer in the future great pain of mind and body, shock, emotional distress, embarrassment, depression, anxiety, loss of self-esteem, disgrace, humiliation, anger, rage, frustration, loss of enjoyment of life, loss of consortium, loss of love and affection, sexual dysfunction, past and future medical expenses for psychological treatment, therapy, and counseling.

COUNT IV
(Lack of Informed Consent)
(All Defendants)

36. Plaintiff incorporates all other paragraphs.

37. Defendants owe a duty to make Plaintiff substantially aware of the nature of the massage treatment procedures.

38. Defendants did not make Plaintiff substantially aware of the procedure breaching the duties owed to Plaintiff.

39. As a direct and proximate cause of Defendants' wrongful acts Plaintiff suffered and will continue to suffer in the future great pain of mind and body, shock, emotional distress, embarrassment, depression, anxiety,

1
2 loss of self-esteem, disgrace, humiliation, anger, rage, frustration, loss of
3 enjoyment of life, loss of consortium, loss of love and affection, sexual
4 dysfunction, past and future medical expenses for psychological
5 treatment, therapy, and counseling.
6

7
8 **COUNT V**
9 **(Infliction of Emotional Distress)**
10 **(All Defendants)**

- 11 40. Plaintiff incorporates all other paragraphs.
12 41. Defendants' wrongful acts, exceeded the bounds of decency and were extreme
13 and outrageous causing Plaintiff to suffer severe physical, emotional and
14 psychological distress.
15 42. As a direct and proximate cause of Defendants' wrongful acts Plaintiff
16 suffered and will continue to suffer in the future great pain of mind and
17 body, shock, emotional distress, embarrassment, depression, anxiety,
18 loss of self-esteem, disgrace, humiliation, anger, rage, frustration, loss of
19 enjoyment of life, loss of consortium, loss of love and affection, sexual
20 dysfunction, past and future medical expenses for psychological
21 treatment, therapy, and counseling.

22 **PRAYER FOR RELIEF**

- 23 1. Plaintiff requests judgment in favor of Plaintiff and against
24 Defendants as follows:
25 a. For Plaintiff's general and special damages in an amount
26 to be proven at trial by jury;
27 b. For Plaintiff's incurred costs together with interest at the
28 highest lawful rate on the total amount of all sums
awarded from the date of judgment until paid;

- 1 c. For the fair and reasonable monetary value of Plaintiff's
2 past, present, and future pain and suffering in an amount
3 to be proven at trial by jury;
4
5 d. For punitive or exemplary damages;
6
7 e. For such other and further relief as this Court may deem
8 just and proper.

9 **DATED** this 31 day of July, 2018.

10 **MONTOYA, LUCERO & PASTOR, P.A.**

11
12 By /s/ Robert E. Pastor
13 Robert E. Pastor
14 Attorneys for Plaintiffs
15
16
17
18
19
20
21
22
23
24
25
26
27
28